

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MAXWELL KADEL, et al.,

Plaintiffs,

v.

DALE FOLWELL, et al.,

Defendants.

No. 1:19-cv-00272-LCB-LPA

**JOINT MOTION TO DISMISS PLAINTIFF’S CLAIMS AGAINST DPS
DEFENDANT WITH PREJUDICE**

Pursuant to Federal Rule of Civil Procedure 41(a)(2), or, in the alternative, Federal Rule of Civil Procedure 21, Plaintiff Dana Caraway (“Plaintiff”),¹ on the one hand, and Defendant North Carolina Department of Public Safety (“DPS Defendant”), on the other hand, respectfully move this Court to dismiss with prejudice Plaintiff’s claim against DPS Defendant under Title VII of the Civil Rights Act of 1964 (“Title VII”), which is the only claim being brought against DPS Defendant in Plaintiff’s Amended Complaint. Plaintiff and DPS Defendant have reached a negotiated settlement of that claim, and Plaintiff seeks to dismiss her Title VII claim against DPS Defendant in consideration of that agreement.

¹ Plaintiffs Maxwell Kadel, Jason Fleck, Connor Thonen-Fleck, Julia McKeown, Michael D. Bunting, Jr., C.B., by his next friends and parents, Michael D. Bunting, Jr. and Shelley K. Bunting, and Sam Silvaine have not asserted any claims against DPS Defendant.

Federal Rule of Civil Procedure 41(a)(2) provides that “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” “While there is a split of authority as to whether Rule 41(a) permits voluntary dismissal of fewer than all defendants, including among district courts within the Fourth Circuit,” “the ‘sounder view’ is that Rule 41(a) permits the voluntary dismissal of fewer than all defendants in an action.” *Duke Progress Energy LLC v. 3M Co.*, No. 5:08-CV-460-FL, 2015 WL 5603344, at *2 (E.D.N.C. Sept. 23, 2015); 9 Charles Alan Wright, et. al., *Federal Practice and Procedure* § 2362 (3d ed.) (noting that “the sounder view and the weight of judicial authority” would support permitting a plaintiff to dismiss one of several defendants under Rule 41(a)).

Alternatively, Federal Rule of Civil Procedure 21 provides that “[o]n motion or on its own, the court may at any time, on just terms, add or drop a party,” and that “[t]he court may also sever any claim against a party.” Given the settlement between Plaintiff and DPS Defendant, dismissal of the Title VII claim against DPS Defendant would be “on just terms.” Fed. R. Civ. P. 21.

Dismissal of Plaintiff’s Title VII claim against DPS Defendant will serve party and judicial economy, as well as be in the interests of justice, because Plaintiff and DPS Defendant have reached a settlement agreement that fully resolves this claim. Because “[i]t has long been clear that the law favors settlement,” *United States v. Manning Coal Corp.*, 977 F.2d 117, 120 (4th Cir. 1992), dismissal of this claim is “proper” under either Rule 41(a)(2) or Rule 21.

Plaintiff and DPS Defendant will each bear their own attorney's fees and costs.

* * *

Dated: August 1, 2023

/s/ Amy E. Richardson

Amy E. Richardson
N.C. State Bar No. 28768
Lauren E. Snyder
N.C. State Bar No. 54150
HWG LLP
333 Fayetteville Street, Suite 1500
Raleigh, NC 27601
Phone: 919-504-9833
Facsimile: 202-730-1301
arichardson@hwglaw.com
lsnyder@hwglaw.com

Deepika H. Ravi*
HWG LLP
1919 M Street N.W., 8th Floor,
Washington, D.C. 20036
Phone: 202-730-1300
Facsimile: 202-730-1301
dravi@hwglaw.com

Dmitriy Tishyevich*
MCDERMOTT WILL & EMERY
One Vanderbilt Avenue
New York, NY 10017-3852
Phone: 212-547-5534
Facsimile: 646-417-7668
dtishyevich@mwe.com

Lauren H. Evans*
MCDERMOTT WILL & EMERY
500 N. Capitol Street, NW
Washington, DC 20001
Phone: 202-756-8864

Respectfully submitted,

Tara Borelli*
Carl S. Charles*
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
1 West Court Square, Ste. 105
Decatur, GA 30030

Decatur, GA 30030
Phone: 404-897-1880
Facsimile: 404-506-9320
tborelli@lambdalegal.org

Omar Gonzalez-Pagan*
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, NY 10005
Phone: 212-809-8585
Facsimile: 212-809-0055
ogonzalez-pagan@lambdalegal.org

David Brown*
TRANSGENDER LEGAL
DEFENSE AND EDUCATION
FUND, INC.
520 8th Ave, Ste. 2204
New York, NY 10018
Phone: 646-993-1680
Facsimile: 646-993-1686
dbrown@transgenderlegal.org

Fax: 202-591-2900
levans@mwe.com

Counsel for Plaintiffs

* Appearing by special appearance
pursuant to L.R. 83.1(d).

/s/ Alex R. Williams
Alex R. Williams
N.C. State Bar No. 41679
Special Deputy Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27699-9001
Phone: 919-716-6528
Facsimile: 919-716-6761
awilliams@ncdoj.gov

*Counsel for North Carolina Department
of Public Safety*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically with the clerk of Court using the CM/ECF system which will send notifications of such filing to all registered users.

Dated: August 1, 2023

/s/ Amy E. Richardson

Amy E. Richardson

N.C. State Bar No. 28768

HWG LLP

333 Fayetteville Street, Suite 1500

Raleigh, NC 27601

Phone: 919-504-9833

Facsimile: 202-730-1301

arichardson@hwglaw.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MAXWELL KADEL, et al.,

Plaintiffs,

v.

DALE FOLWELL, et al.,

Defendants.

No. 1:19-cv-00272-LCB-LPA

[Proposed] Order

Upon consideration of the joint motion by Plaintiff Dana Caraway (“Plaintiff”) and Defendant North Carolina Department of Public Safety (“DPS Defendant”) to dismiss with prejudice Plaintiff’s claim against DPS Defendant under Title VII of the Civil Rights Act of 1964 (“Title VII”), which is the only claim being brought against DPS Defendant, it is hereby

ORDERED that the motion is **GRANTED**. Plaintiff’s claim against DPS Defendant under Title VII is dismissed *with prejudice*. Each party will bear its own attorney’s fees and costs.

Dated: _____

U.S. District Court Judge for the
Middle District of North Carolina